

Summary Minutes of the
Delta Protection Commission Meeting
Thursday, November 29, 2007

ADMINISTRATIVE AGENDA

1. Call to Order/Flag Salute

Chairman McGowan called the meeting to order at 6:30 p.m.

2. Welcome New Commissioners

Chairman McGowan welcomed Darlene Dawson and Jeff Hart to the Commission. Ms. Dawson, a resident of Antioch will represent Delta Landowners in Outdoor Recreation; Mr. Hart, a resident of Walnut Grove will represent Delta Landowners in Wildlife Conservation.

3. Roll Call

Present: Chairman McGowan, Commissioners Armor, Brand, Calone, Dawson, Dresser, Ferguson, Hart, Johnson, Johnston, Kelly, Nottoli, Reagan, Ruhstaller, Simonsen, Shaffer, Tilghman, and van Loben Sels.

Absent: Commissioners Cabaldon, Piepho, Scriven, and Wilson.

4. Public Comment - Opportunity for Members of the Public to Address the Commission. Comments Also Welcome as Agenda Items are Discuss

Harry Moore, Stockton reported that the water tables of the entire valley area have dropped dramatically from over pumping and are still causing losses of our aquifers in all areas. Mr. Moore said that much of the Delta is fifteen to twenty feet below sea level and sinking about four inches per year. Additionally over 5,200 square miles of the central valley has subsided in excess of one foot and in some areas around Mendota as much as 31 feet. Mr. Moore said that in order to recover a portion of the losses, the first step would be to protect the head waters and restart as much fresh water flow as possible for our main rivers and streams. He also said the San Joaquin River could release at least one-third of its natural flow as quickly as possible and then increase over a period of time all rivers and streams to two thirds flow and never remove or transport over one third of their flow away from their natural influence. Additionally, coastal cities should look towards desalinization to release water from dammed areas and help restore natural flows of our rivers and streams. Mr. Moore said that many of the Delta's levees have reached the shear capacity of the underlying soil and will require engineering to raise them higher which could be accomplished and widening and using dredged spoils. He said this and other maintenance work could be done while flows are being restarted in various areas.

John Herrick stated that he was concerned that the Commission was disseminating information and materials from the Association of California Water Agencies (ACWA). Mr. Herrick said that ACWA has taken a position on the Peripheral Canal and by virtue of the fact that the Commission is broadcasting ACWA materials; it too has taken a position. He said that if the Commission wanted to disseminate information on its website, it should use materials from all agencies.

Gary Adams, California Striped Bass Association also stated that ACWA should not be advertised.

Ms. Fiack commented that part of the role of the Commission is to disseminate information relative to the Delta interested parties as informational which does not presume a Commission position on any given matter.

CONSENT AGENDA (Items 5-16)

Commissioner Reagan moved Agenda Item 11 and Agenda Item 12 to the Regular Agenda.

Commissioner van Loben Sels moved approval of the Consent Agenda; Commissioner Ruhstaller seconded. The Consent Agenda was approved unanimously.

REGULAR AGENDA (Items 11, 12, 17-24)

11. Receive Informational Update from Bureau of Reclamation on Prospect Island.

Commissioner Reagan stated that Prospect Island is an example of an island without management. He said that the Bureau of Reclamation is looking at other agencies to take over the liability of the island.

Commissioner Calone stated that the Commission had taken an earlier position that letting it go was inappropriate; however agency/farmers of Ryer Island did not want to take the same position.

Commissioner Hart said that the rescue efforts on the island came from the fishing community. He said that long term planning for the island is unclear and there is frustration from the Department of Fish and Game (DFG) because of the lack of personnel or funding committed to maintain the island.

Gary Adams, President of the Striped Bass Association stated that DFG was not notified about the incident. He said that the Striped Bass Association tried to get people to the island but was threatened with tickets and fines. Mr. Adams said that he saw areas of several hundred striped bass that would not last another three days. He said that DFG should have been apprised ahead of time of the issue.

Commissioner Kelly moved approval of Agenda Item #11; Commissioner van Loben Sels seconded. The item was approved unanimously.

12. Receive Informational Update on Delta Risk Management Strategy Draft (DRMS) Report

Commissioner Reagan stated that he is concerned about the concept to abandon the West Delta.

Commissioner Brand stated that she sits on the DRMS subcommittee. She said that Phase I of the report would encompass a model to assess risk in the Delta and Phase II was to test the model.

Commissioner Armor said that the Suisun Marsh Plan was being developed and should be available within three to four months.

Commissioner van Loben Sels moved approval of Agenda Item #12; Commissioner Dresser seconded. The item was approved unanimously.

17. Receive Informational Presentation from Staff of the Department of Boating and Waterways (DBW) Relative to Aquatic Invasive Species.

Marcia Carlock reported that DBW is tasked with managing the Egeria Densa program. She said that Egeria Densa is a weed that tends to appear in waters that are less than 10 feet and is spreading at 1,000 acres a year. Ms. Carlock said that DBW currently treats the weed with herbicides, but can only do so between July 1 and October 15 due to salmon migration—with some exceptions. She also said that it is hoped that after three seasons of treatment, DBW will not have to use herbicides for several years. She also reported that DBW treats the Water Hyacinth from July 1 to October 15th and has been doing so for 24 years.

Commissioner Armor asked when and where the next treatment would take place. Ms. Carlock responded that Franks Tract would be the only area treated in 2008.

Commissioner Brand commented that the State Lands Commission has been participating in a pilot project to remove the Eurasian Watermilfoil, and has had success with diver assisted vacuum suction. She asked if DBW has considered vacuum suction. Ms. Carlock responded no, because of concerns with creatures living in the mud.

18. Consider Recommendations for Chair and Vice-chair for Term 2008-2009 from the Nomination Sub-Committee.

Ms. Fiack reported that the Nomination Subcommittee met to develop policy guidelines and make recommendations for the selection and appointment of the Chair and Vice-Chair positions for 2008 and 2009. She said that after careful consideration, the Sub-Committee was recommending that Commissioner Simonsen be nominated and appointed as Chair and Commissioner van Loben Sels be nominated and appointed as Vice-Chair.

Commissioner Calone moved that Arne Simonsen be appointed as Chair and Topper van Loben Sels be appointed as Vice-Chair; Vice Chair Ferguson seconded the nomination. Both Commissioners accepted and the appointments were approved unanimously.

19. Receive Update on Amendment of Commission Regulations Concerning Appeals.

Dan Siegel gave a background presentation on the appeal process. He said that until recently, the only way the Commission could hear an appeal was if an aggrieved party filed one. However, the Commission's statute was amended to provide for a second avenue whereby the Commission itself could initiate an appeal upon majority vote. Mr. Siegel stated that as a result of the new procedure, the Commission needed to update its regulations. He provided draft amended regulations that would provide for the second avenue of appeal. He then reviewed the proposed changes. He explained Commissioner Tilghman had provided comments, and asked for additional feedback at the meeting.

Commissioner van Loben Sels commented that he would like to see flexibility on extending a hearing to another date if the hearings were running too long in the hour. He said this would allow the Commission to think more clearly regarding the merits and/or jurisdiction of an appeal. Mr. Siegel responded that the Statute is written to allow more flexibility regarding an appeal initiated by the Commission than with one initiated by an aggrieved party.

Commissioner Simonsen asked if the Commission should use working days on its time limits. Mr. Siegel responded yes; the Commission should use working days before 45 days but use calendar days after 45 days.

Commissioner Calone suggested that the Commission start hearings earlier in the day so that there would be enough time to hear all parties and make informed decision. Mr. Siegel responded that earlier meeting times would be possible if the Commissioner knew there would be a hearing. He said it would also be a smart move in order to not allow the process to drag on.

Commissioner Tilghman suggested that the draft regulations include the use of working days as opposed to calendar days where the time period is short. He also suggested that a provision be added to allow an appellant to withdraw an appeal, and that there be transparency in the process to allow the public, appellant, applicant and Commission to allow for staff recommendations in advance of the hearing. Commissioner Tilghman suggested that there be requirements that written recommendations be required for an appeal so that there be an opportunity, in advance, to have a common launch point with which to consider an appeal. He said that Sec 20001 is convoluted and should be either divided into two sections or revised to reflect content.

Mr. Siegel responded that the title could be revised to make the section clear. He also said that as far as requiring written recommendation regulations for jurisdictional appealability hearings, a staff recommendation could be oral or written, however, the question is whether there should be a mandate that the recommendations be written as opposed to oral. Mr. Siegel said that he was concerned that if the calendar works out for a 15 day working day situation for a complex situation, it would be hard to distribute a good written recommendation. Mr. Siegel suggested the extension of the 15 day period which would allow wiggle room to encourage a written recommendation rather than to mandate a written recommendation.

Commissioner Reagan asked if there was a change in law that precluded the Commission from taking action on handouts, in accordance with public notice requirements. Mr. Siegel responded that he did not know, but would look into to the matter.

Chair McGowan stated that while he encouraged a staff recommendation he was resistant to making it a formal requirement because of time constraints.

Peggy Bohl, Clarksburg, said that the Management Plan works well. She said she knew of three projects taken off the drawing board as a result of the Commission's action on Clarksburg. Ms. Bohl said that if the Commission was going to look at the appellant/aggrieved process, she would like to see a mechanism that would give flexibility where more time is needed regarding the appellant/aggrieved party process. Mr. Siegel responded that it would be built into the Commission initiated appeal and would look into whether or not there are constraints for doing the same for the aggrieved parties.

20. Receive Informational Update on Delta Vision Process from Delta Vision Stakeholder Committee Members, Including Correspondence Submitted to the Delta Vision Blue Ribbon Task Force by Commissioner Member Entities.

Ms. Fiack reported that a revised Delta Vision draft was circulated at the DVBRTF meeting with the expectation that action to approve the draft would be taken at the next day's meeting. She said it appeared that the direction of the Task Force would be to consider a limited number governance body that would have water contractor representation, and a separate entity to address land use issues, and possibly a third group (nonprofit) to sell the identity of the Delta. Ms. Fiack said the adopted draft Vision would be forwarded to the Governor, with the next phase consisting of the strategic planning process for implementing the vision.

Commissioner Simonsen commented that he appreciated the efforts of the entities that submitted letters regarding the Delta Vision. He said that those who live, work, and play in the Delta, and the Commission should be concerned when the Natural Resources Defense Council, Westlands and Metropolitan Water District are asked to provide feedback on items.

Commissioner van Loben Sels reported that the Vision did not turn out as he expected. He also said that the Vision would give water for people equal priority as water for ecosystems.

Gary Adams stated that there seemed to be a question on language that addresses revitalizing ecosystems whereby it "will require" rather than "may require" reduced diversions. He asked if there had been any change to the situation. Ms. Fiack responded that the issue should be resolved at the next days' discussions of the Task Force.

21. Receive Update on Lower Sherman Island Lake Safe Passage Marker Buoy Issue.

Commissioner Armor reported that he and Commissioner Nottoli would meet to work out the mechanics of funding and drafting a document to provide access, and a process to get someone out to provide a marker for navigation.

22. Commissioner Comments/Announcements.

There were no announcements.

24. Adjourn.

The meeting was adjourned at 9:15 a.m.